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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,386	12/21/2001	Ronald Michalski	(13426)	6801

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EXAMINER

CHAN, SING P

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,386

Applicant(s)

MICHALSKI ET AL.

Examiner

Sing P Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Winn, deceased (U.S. 5,168,883).

Regarding claim 1, Winn discloses an apparatus for applying tax stamps to cigarettes in cartons. The apparatus includes a conveyor for conveying the cartons of cigarette, a sizing station to determine the height of the cigarette cartons and means for automatically adjusting the elevation of the stamping heads. (Col 3, line 24-52)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4, 7, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) as applied to claim 1 above, and further in view of Szewczyk et al (U.S. 5,250,138).

Regarding claim 2, Winn discloses photoelectric cells to automatically determining the size or height of the carton, (Col 3, lines 39-42) which are considered to be capable of both detecting the presence of a particular size of carton and determining the height. Winn as modified above is silent as to the sensors and automatic elevation adjusting means are connected to a programmable logic controller. However, providing a programmable logic controller to automatically control the elevation is well known and conventional as shown for example by Szweczyk et al. Szweczyk et al discloses a label applicator with automatic height positioning. The automatic height positioning means is operated by automatic controller with numerical controller, which operates from a program tape and corresponding position signal from sensors. (Col 3, lines 37-60 and Col 6, lines 28-58)

It would have been obvious to one skilled in the art at the time the invention was made to provide a programmable logic controller to automatically control the height of the any stations or applicator as disclosed by Szweczyk et al in the apparatus of Winn to provide an automatic control of the height adjusting means to change the elevation quickly and easily.

Regarding claim 3, Winn discloses a carton opening station between the sizing station and the stamping station and a carton closing station downstream of the stamping station. (Col 3, line 53 to Col 4, line 4 and Col 4, lines 55-61)

Regarding claim 4, Winn discloses a pair of beveled pinch roller, i.e. doming wheels, to cause the carton flaps to pop up and a plow knife to open the carton flaps, and at the carton closing station includes a glue trough, i.e. glue pot, and glue wheel for

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applying glue to the flaps, carton flap closer pushes the flaps downward and closing roller pushes the flaps shut. (Col 3, line 53 to Col 4, line 4 and Col 4, line 55 to Col 5, line 6)

Regarding claims 7 and 20, Winn discloses pads for propelling the cartons through the apparatus (Col 3, lines 24-28 and Figures 1 and 2) to convey cartons of various heights through the apparatus and the various stations are considered to be equally spaced.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) in view of Szewczyk et al (U.S. 5,250,138) as applied to claim 4 above, and further in view of Marchetti (U.S. 4,722,165).

Winn as modified above is silent as to the height of the closing station is automatically adjusted. However, automatically adjusting the height of the closing station for carton is well known and conventional as shown for example by Marchetti. Marchetti discloses a self-adjusting closing machine for boxes of various heights. The apparatus includes a detecting device for measuring the height of the box to adjust the height of the closing assembly. (Col 5, lines 9-38)

It would have been obvious to one skilled in the art at the time the invention was made to provide a detecting device for measuring height of box or cartons to allow automatic adjustment of the height of the closing assembly as disclosed by Marchetti in the apparatus of Winn to allow automatic adjustment of the height of the box or carton closing assembly to allow closing of boxes and carton of any height or size quickly and easily.

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6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) in view of Szewczyk et al (U.S. 5,250,138) and Marchetti (U.S. 4,722,165) as applied to claim 5 above, and further in view of Ferguson (U.S. 5,657,855).

Regarding claim 6, Winn as modified above is silent as to the height adjustment is made with servomotors. However, using motor to adjust the height of the stations is well known and conventional as shown for example by Szewczyk et al. Szewczyk et al discloses drive motor for adjusting the z-axis, i.e. the height of the applicator. (Col 6, lines 12-58)

It would have been obvious to one skilled in the art at the time the invention was made to provide a motor to adjust the height of the applicator as disclosed by Szewczyk et al in the apparatus of Winn to provide a means, which is readily available and easily obtain cheaply to adjust the height of the applicator. Szewczyk et al is silent as the motor is a servomotor. However, using a servomotor to provide the needed stepwise rotation of axle or shaft is well known and conventional as shown for example by Ferguson. Ferguson discloses an apparatus for applying indicia for cigarette packages. The apparatus includes servomotor to provide an accurate and fast positioning with 24,000 steps to move the wheel 45 degree. (Col 3, lines 48-61)

It would have been obvious to one skilled in the art at the time the invention was made to provide servo motor as disclosed by Ferguson in the apparatus of Winn to provide an accurate and fast positioning means for the height adjustment to allow the applicators or stations to be positioned quickly and accurately.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) as applied to claim 1 above, and further in view of Baker et al (U.S. 4,101,362).

Winn discloses a holder for the tax stamp paper with predetermined row and column array of tax stamps is provided and a stamping head for applying the tax stamps to the cigarette package. (Col 4, lines 5-54) Winn is silent as to the stamping head includes spaced stamping shoe and the head is linearly longitudinally movable.

However, providing spaced stamping shoe on the stamping head and is linearly longitudinally movable are well known and conventional as shown for example by Baker et al. Baker et al discloses an apparatus for applying transfer such as tax stamp to cartons. The apparatus includes a series of platen elements on the platen, i.e. stamp head, to properly transfer the tax stamps to the cigarette packages. (Col 10, lines 35-66) The stamp head also movable in a lateral direction for adjustment to insure proper placement of the tax stamps onto the cigarette packages. (Col 8, lines 42-58)

It would have been obvious to one skilled in the art at the time the invention was made to provide platen elements or shoes on the stamp head and providing lateral adjustment, i.e. linearly longitudinally movement for the stamp head, to allow accurate placement of the stamps onto the cigarette packages as disclosed by Baker et al in the apparatus of Winn to allow the stamp head to be adjusted insure proper placement of the stamps quickly and easily.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) in view of Marchetti (U.S. 4,722,165).

Winn discloses an apparatus for applying tax stamps to cigarette packages in carton. The apparatus includes a conveyor, a cigarette carton height determination station, a cigarette carton opening station with carton opening means, a tax stamp application station with tax stamp application means, cigarette carton closing station with carton closing means, and means for adjusting the height of the carton opening means and tax stamp application means. (Col 3, line 16 to Col 5, line 6) Winn is silent as to the carton closing means include means for adjusting the height. However, providing a means to automatically adjust the carton closing means is well known and conventional as shown for example by Marchetti. Marchetti discloses an apparatus for closing cartons or boxes with an automatic self-adjusting for the closing assembly. (Col 5, lines 9-38)

It would have been obvious to one skilled in the art at the time the invention was made to provide an automatic self adjusting closing assembly for closing and sealing boxes or cartons of various sizes and height as disclosed by Marchetti in the apparatus of Marchetti to allow any cartons or sizes to be closed and sealed quickly and easily without the need for manual adjustment.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) in view of Marchetti (U.S. 4,722,165) as applied to claim 16 above, and further in view of Szewczyk et al (U.S. 5,250,138).

Winn discloses photoelectric cells to automatically determining the size or height of the carton, (Col 3, lines 39-42) which are considered to be capable of both detecting the presence of a particular size of carton and determining the height. Winn as modified

above is silent as the apparatus includes a programmable logic controller (PLC) for automatic adjustment of the height at the stations. However, using (PLC) with sensors for automatic height adjustment is well known and conventional as shown for example by Szewczyk et al. Szewczyk et al discloses an apparatus for automatic height positioning of a label applicator, which includes a command signals controller with a numerical controller and operates with a program tape, i.e. a programmable logic controller, and adjust the z-axis direction of the assembly such as labeler and cutter. (Col 3, lines 37-60 and Col 6, lines 12-58)

It would have been obvious to one skilled in the art at the time the invention was made to provide a programmable logic controller as disclosed by Szewczyk et al in the apparatus of Winn to provide an easy and simple means of controlling the adjusting means for the assembly.

10. Claims 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) in view of Marchetti (U.S. 4,722,165) as applied to claim 16 above, and further in view of Baker et al (U.S. 4,101,362).

Winn discloses the opening means for the carton opening station includes two beveled pinch rollers, i.e. doming wheel, a plow knife for inserting under the flaps to opens the flaps, (Col 3, line 55 to Col 4, line 4) the stamp application means includes stamping head, i.e. stamping iron, for transferring the stamps to the packs of cigarettes, holder for a roll of tax stamp, which allow the stamps to be advanced so as to present new rows of tax stamps, (Col 4, lines 5-54) and carton closing means includes a glue trough, i.e. a glue pot, glue wheels, flaps closer and roller press the flaps shut. (Col 4,

line 55 to Col 5, line 6) Winn does not disclose stamping shoes for engaging the spaced tax stamps. However, providing stamping shoes for engaging spaced tax stamps is well known and conventional as shown for example by Baker et al. Baker et al discloses an apparatus for applying transfer such as tax stamps to cigarette packages. The apparatus includes platen with platen elements, stamping shoes, corresponding to the tax stamps placement on the roll for applying the stamps to the cigarette packages. (Col 10, lines 35-66) The stamp head also movable in a lateral direction for adjustment to insure proper placement of the tax stamps onto the cigarette packages. (Col 8, lines 42-58)

It would have been obvious to one skilled in the art at the time the invention was made to provide stamping shoes on the stamping head as disclosed by Backer et al in the apparatus of Winn to provide a simple and easy means for insure proper transfer of stamps to the cigarettes packages.

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, deceased (U.S. 5,168,883) in view of Marchetti (U.S. 4,722,165) and further in view of Baker et al (U.S. 4,101,362) as applied to claim 18 above, and further in view of Ferguson (U.S. 5,657,855).

Winn as modified above is silent as to using servomotors to adjust the height of the stations. However, using motor to adjust the height of the assembly or applicator is well known and conventional as shown for example by Marchetti. Marchetti disclose the assembly or applicators are adjusted using drive motors. (Col 6, lines 12-27)

It would have been obvious to one skilled in the art at the time the invention was made to provide drive motors as disclosed by Marchetti in the apparatus of Winn to adjust the height position of the assembly easy with means, which are readily available and easily obtain. Marchetti is silent as to the drive motors are servomotors. However, providing servomotor as the drive motors are well known and conventional as shown for example by Ferguson. Ferguson discloses an apparatus for applying indicia to cigarette packages. The apparatus includes servomotor for various driving system for axle or shaft. (Col 3, lines 48-61)

It would have been obvious to one skilled in the art at the time the invention was made to provide servo motors as drive motors as disclosed by Ferguson in the apparatus of Winn to provide the fine adjustment needed for accurately positioning the assembly or station easily and quickly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P Chan whose telephone number is 703-305-3175, after December 25, 2003 the examiner's telephone number will change to (571) 272-1225. The examiner can normally be reached on Monday-Friday 7:30AM-11:15AM and 12:15PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Chan Sing B
spc

[Signature]
CURTIS MAYER
PRIMARY EXAMINER